IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Bachhu Singh & Others Vs. Board of Revenue for Rajasthan & Others
(SB Civil Writ Petition No.2505/1999)

SB Civil Writ Petition under Articles
226 & 227 of the Constitution of India.

Date of order: November 02, 2006.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. K.K.Sharma, for the petitioners.

None for respondents.

BY THE COURT:

Heard learned counsel for the petitioner.

2. The petitioners and their forefathers were in exclusive possession of the Muafi land belonging to temple in village Sataruk. The Idol of temple was stolen and on death of Pujari Vrandavandas Muafi was resumed and the land vested in State Government. The Tehsildar Bharatpur thereafter issued pattas of the land to forefathers of the petitioners and they continued to deposit rent to the State. Initially the forefathers of petitioners were recorded Gair Khatedar thereafter mutations were opened in the year 1966. The suit filed by respondent Mahant of Murti Mandir was also dismissed on March 22, 1966.

Thereafter about 30 years, the Tehsildar Kumher moved application before District Collector Bharatpur for making reference under section 82 of Rajasthan Land Revenue Act and learned District Collector Bharatpur vide order dated July 14, 1995 held that mutations have wrongly been opened,

therefore he made reference. The Board of Revenue vide judgment dated January 1, 1999 accepted the reference and quash the entries of mutations in question. The review petition filed by petitioners was dismissed vide order dated April 15, 1999. Against these orders that the petitioners have preferred instant writ petition.

3. Admittedly, even after dismissal of the suit of Mahant in the year 1966, the respondents initiated the proceeding of reference in the year 1995 after unreasonable delay of more than 30 years. There is nothing on record to show that fraud was played in getting the name entered in the record by the petitioners.

4. Division Bench of this court in Anandi Lal Vs. State of Rajasthan (1996 DNJ (Raj.) 100) indicated that to permit exercise of revisional powers under sections 82 and 232 of the Rajasthan Land Revenue Act,1956 (for short `1956 Act') after unreasonable delay would amount putting imprimatur of the courts on the unreasonable and arbitrary exercise of powers. In Mangi Lal Vs. State of Rajasthan (1998(1) WLC (Raj.) 625) it was however observed that where order has been obtained by fraud, the power of reference can be exercised even after the unreasonable delay.

5. In State of Rajasthan Vs. Teja [2005(2) WLC (Raj.) 53) indicated in para 10 thus:-

> "While it is true that the subject transfer is in violation of Section 42-B of the Act of 1955 but that, in itself, is not sufficient. As the respondent has acquired tenancy/ khatedari rights and continued in possession of the land for number of years, his rights cannot be called in question after unreasonable delay in absence of a positive case of fraud on account of collusion between the public officer and the private party. The Collector before invoking the revisional power, has not recorded any reasons to the effect that illegality in transfer as a consequence of fraud between the

> public officer and the private party has suffered (sic) public loss. In our view, the Board of Revenue has committed error in accepting the reference made by the Collector without satisfying the pre-requisites. Learned Single Judge has rightly set aside the order of the Board of Revenue."

6. Having closely analysed the material on record, I find that it is not a case where obvious manipulation has been perpetrated in the record. The name of petitioners entered in the revenue record was not founded on fraud and even the suit filed by Mahant against the mutation was dismissed on March 22, 1966, therefore the exercise of making reference after unreasonable delay would be unjust and unreasonable. Although sections 82 and 232 of the Rajasthan Land Revenue Act,1956 do not provide for the period of limitation, but concept of exercise of power in a reasonable manner inheres with it the concept of exercising the same within a reasonable time and if the power is not exercised within reasonable time, the invocation of the power after inordinate delay and the exercise of the same after unreasonable length of time would be illegal and void.

8. For these reasons, I allow the writ petition and set aside the impugned orders dated July 14, 1995 of District Collector Bharatpur, January 7, 1999 and April 15, 1999 of Board of Revenue. There shall be no order as to costs.

(Shiv Kumar Sharma),J.

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